

ACTS AND RESOLVES
OF THE
GENERAL ASSEMBLY
OF THE
State of Rhode Island and Providence Plantations,

PASSED
JANUARY, A. D., 1853,
BEING THE ADJOURNMENT OF THE OCTOBER SESSION;
WITH THE ROLL OF MEMBERS, AND THE REPORTS ORDERED TO BE PUBLISHED.



State of Rhode Island, &c.
OFFICE OF THE SECRETARY OF STATE, MARCH, 1853.

PROVIDENCE:
SAYLES, MILLER & SIMONS, PRINTERS TO THE STATE.
1853.

EXHIBIT 7 (McLean)

☞ The General Assembly convened in Providence, agreeably to adjournment, on the second Monday of January, 1853, and adjourned on Friday, the 25th of February, following.

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or pistol, within eighty rods of any baiting place not his own property, and actually used, in the proper season therefor, for the baiting and netting of wild pigeons, shall be fined not exceeding twenty dollars nor less than five dollars.

SEC. 2. Every person who shall be convicted of strewing or placing any powder or brimstone or other sulphurous substance upon any baiting place not his own property, or of burning thereon any of said substances saturated with tar or turpentine, shall be fined not less than five nor more than twenty dollars.

SEC. 3. All fines and penalties under the preceding sections of this Act shall be recovered by like processes as is prescribed in the Act to which this is in addition.

AN ACT for the more effectual suppression of Drinking Houses and Tippling Shops.

It is enacted by the General Assembly as follows :

Act for the more effectual suppression of Drinking Houses and Tippling Shops.

SECTION 1. No person shall be allowed, at any time, to manufacture or sell or suffer to be manufactured or sold by any person, or keep or suffer to be kept on his premises or possessions, or under his charge, for the purposes of sale, any ale, wine, rum or other strong or malt liquors, or any mixed liquors, a part of which is ale, wine, rum or other strong or malt liquors, except as hereinafter provided.

SEC. 2. The town council of any town may, and the mayor and aldermen of any city shall, annually on the Monday next following the annual election of town officers in any town, or as soon thereafter as may be convenient, appoint some suitable person or persons, as the agent or agents of said town, to sell at some central or convenient place within said town, ale, wine, rum or other strong or malt liquors, to be used for medicinal and mechanical purposes only: and said agent shall receive such compensation for his services, and shall in the sale of such liquors, conform to such rules and regulations, as the town council as aforesaid shall prescribe. Any such agent, appointed as aforesaid, shall hold his situation for one year, unless sooner removed by the board from which he received his appointment, as he may be at any time, at the plea-

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sure of said board: and in case of a vacancy in said appointment, by such removal or otherwise, said board may appoint some other person to such agency for the remainder of the year.

SEC. 3. Every such agent shall receive a certificate from the board by whom he has been appointed, authorizing him, as the agent of such town, to sell ale, wine, rum or other strong or malt liquors, for medicinal and mechanical purposes only: but such certificate shall not be delivered to the person so appointed, until he shall have executed and delivered to said board, a bond with good and sufficient sureties, in the sum of six hundred dollars, in substance as follows:

Know all men, that we as principal, and
as sureties, are holden and stand firmly bound to the
town of (or city of) (as the case may be,)
in the sum of six hundred dollars, to be paid said town:
to which payment we bind ourselves, our heirs, executors and administrators, firmly by these presents.—
Sealed with our seals, and dated this day of

A. D. The condition of this obligation is such,
that whereas the above bounden has been duly
appointed an agent for the town (or city) of to
sell within and for and on account of said town (or
city,) ale, wine, rum, or other strong or malt liquors,
for medicinal and mechanical purposes only, until the
day of A. D. , unless sooner re-

moved from said agency. Now if the said shall
in all respects, conform to the provisions of the law,
relating to the business for which he is appointed, and
to such rules and regulations, as now are, or shall be
from time to time established by the board making
the appointment, then this obligation shall be void,
otherwise it shall remain in full force.

SEC. 4. If any person shall at any time, sell, or
suffer to be sold by any person, any ale, wine, rum or
other strong or malt liquors, or any mixed liquors, as
aforesaid, in violation of the provisions of this act, he
shall be sentenced on the first conviction, to pay the
sum of twenty dollars and all costs of prosecution and
conviction, and to be imprisoned in the county jail for
ten days, and on the second conviction he shall be sen-
tenced to pay the sum of twenty dollars and all costs
of prosecution and conviction, and be imprisoned in

the county jail three calender months; and on the third and every subsequent conviction he shall be sentenced to pay the sum of twenty dollars and all costs of prosecution and conviction, and be imprisoned in the county jail not less than three nor more than six calendar months; and in each case to stand committed until sentence be performed in all its parts. And if any person shall keep or suffer to be kept on his premises or possessions, or under his charge, for the purposes of sale, in violation of the provisions of this act, any ale, wine, rum or other strong or malt liquors, or any mixed liquors as aforesaid, he shall on conviction thereof be sentenced to pay the sum of twenty dollars and all costs of prosecution and conviction, or to be imprisoned in the county jail for thirty days.— And all such liquors so kept by any person for the purposes of sale in violation of the provisions of this act, shall be liable to be seized, together with the casks or other vessels containing them, and adjudged forfeited, upon complaint made, and trial had, as hereinafter provided.

SEC. 5. All prosecutions for offences under the fourth section of this act, shall be by complaint and warrant in the name of the State, before any justice of the peace, or any court exercising the jurisdiction of a justice of the peace, in the town where the offence was committed: one half of said fine to and for the use of the complainant, and the other half thereof to and for the use of the State: and the prosecutor and complainant by waving in favor of the State his portion of the fine, may be admitted as a witness in the trial; and no judgment rendered upon a subsequent complaint for the same offence shall be a bar, or prevent judgment upon the merits being rendered on any prior complaint, and the pendency of the former complaint may be pleaded in bar of the second complaint.

SEC. 6. Any person convicted before a justice of the peace, or a court exercising the jurisdiction of a justice of the peace, of any offence under the fourth section of this act, may appeal from the sentence of the justice or court, to the Court of Common Pleas, next to be holden in the same county, after ten days; *provided*, such appeal be prayed at the time of passing sentence; and upon such prayer the appellant

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shall be required to give recognizance, in the sum of one hundred dollars, with good and sufficient sureties, in every case so appealed, conditioned, that he will file his reasons of appeal, together with a copy of the whole case in the court appealed to, on or before the second day of the term thereof, as aforesaid, that he will appear before said court, and there prosecute his appeal with effect, and abide or perform the order or sentence of said court, in said case, and that he will not during the pendency of such appeal violate any of the provisions of this act, which recognizance such justice or court shall forthwith certify to said Court of Common Pleas; and upon the neglect of said appellant, to give such recognizance, he shall forthwith be committed to the jail in the same county, there to remain until he give such recognizance, or be discharged by order of law. And the said appeal shall be in said Court of Common Pleas heard and tried, and the judgment or sentence therein shall be final.

SEC. 7. The town council of any town, whenever complaint shall be made to them in writing, that a breach of the conditions of the bond given by any agent appointed by them has been committed, shall notify the person complained of, and if upon a hearing of the parties it shall appear that any breach has been committed, they shall revoke and make void his appointment: and the town treasurer shall, at the expense and for the use of said town, cause the bond to be put in suit, in any court of competent jurisdiction, unless otherwise directed by the town council.

SEC. 8. No person shall be allowed to manufacture any ale, wine, rum, or other strong or malt liquors, or to be a common seller thereof, without being duly appointed as aforesaid, on pain of forfeiting on the first conviction, the sum of one hundred dollars and costs of prosecution, and in default of the payment thereof, the person so convicted shall be imprisoned sixty days in the county jail of the same county in which the offence was committed: and on the second and on every subsequent conviction, the person so convicted shall forfeit and pay the sum of two hundred dollars and costs of prosecution and conviction, and shall be imprisoned four months in said county jail: said penalties to be recovered before any court of competent ju-

isdiction, by indictment in the county where incurred, one half of said forfeiture to and for the use of the town in which the offence shall have been committed, and the other half thereof to and for the use of the State. And three several sales of ale, wine, rum, or other strong or malt liquors, or mixed liquors as aforesaid, either to different persons or the same person, shall be sufficient to constitute one a common seller within the meaning of this act. But nothing in this act contained, shall be construed to prohibit the manufacture of cider or the sale thereof in quantities not less than one gallon, or the manufacture of wine or malt liquors for domestic use, or of alcohol for exportation, or to be sold to or through, and only to or through the agents appointed under the second section of this act.

SEC. 9. Any justice of the peace, within the town in which he resides, and any court exercising the jurisdiction of a justice of the peace, within the town in which such court is established, may issue a search warrant for the purpose of searching for any ale, wine, rum, or other strong or malt liquors, or any mixed liquors, as aforesaid, held for sale contrary to law, such warrant to be served during the day time, complaint being first made in writing, on oath, as is required before issuing of search warrants in other cases, which complaint shall be made by three legal voters and distinctly set forth that the liquors described in the warrant are believed to be held for sale contrary to the provisions of this act, in some house or place within the town in which the complaint is made, or in some vessel or craft in any of the waters of Narragansett Bay ; and all such liquors together with the casks or other vessels in which the same are contained, and which shall be found by any officer in executing any such search warrant, shall be safely kept so long as shall be necessary for the purposes of evidence in any case arising under this act ; and upon final conviction of the person or persons in whose possession the said liquors and the vessels containing them shall be by the justice or court adjudged forfeited, the said liquors be ordered to be destroyed, and the said casks or other vessels to be delivered to the sheriff of the county, or his deputy, and the officer to whom such casks shall

be delivered as aforesaid, shall advertise and sell the same, in the same manner in which like personal property is liable to be sold on execution, and the proceeds of such sale after deducting therefrom his lawful fees and charges, he shall pay over to the justice or clerk of the court, to and for the use of the State. But in the event of the acquittal of the person charged with the unlawful keeping or possessing of the liquors so seized, the same together with the vessels containing them, shall be returned to the place from which they were taken, by the officer in whose custody they may be: *Provided* that no warrant to search for liquors shall issue, until a warrant shall have been issued for the supposed owner thereof, or the person having said liquors in charge, on complaint for keeping or suffering to be kept on his premises or possessions, or under his charge, liquors of the kind aforesaid, contrary to the provisions of this act. And any person convicted upon any such complaint may appeal from the sentence, judgment and order of the justice or court thereon, to the court of Common Pleas next to be holden in the same county after ten days; in the same manner, and upon the same terms and conditions and with the like effect, as prescribed in section 6th of this act. *Provided however*, that any appeal from any sentence, judgment and order of the Court of Magistrates of the City of Providence, prior to the 15th day of March, 1853, shall be to the Supreme Court at its March term, 1853, in the county of Providence, wherein such appeals shall be heard and tried, and the decision therein shall be final. And the recognizance required on such appeals shall be varied by the said Court of Magistrates conformably with this proviso. And in case of such appeal, if the final decision shall be against the appellant, sentence shall be passed by said appellate court, and such liquors seized be adjudged forfeited and ordered to be destroyed as herein provided; and all reasonable charges incidental to the keeping and storage of such liquors, from and after the date of its seizure, shall be taxed in the costs against the defendant. But nothing in this act contained shall be construed to prevent any person from keeping on his premises or possessions, any liquors which are of foreign production, and which have been

imported under the laws of the United States and in accordance therewith, and which are contained in the original packages in which they were imported, but the custom house certificates of importation and proof of marks on the casks or packages corresponding thereto, shall not be received by any court in this State as conclusive evidence that the liquors contained in those packages are those actually imported therein.

SEC. 10. It shall be the duty of any mayor, alderman, city marshal, city or town sergeant, constable or police officer, of any city or town, if he shall have information that any ale, wine, rum, or other strong or malt liquors, or any mixed liquors as aforesaid, are kept for sale or sold in any tent, shanty, hut or place of any kind for selling refreshments in any public place, on or near the ground of any cattle show, agricultural exhibition, military muster or public occasion of any kind, to search such suspected place, and if such officer shall find upon the premises any ale, wine, rum, or other strong or malt liquors, or any mixed liquors as aforesaid, he shall seize them and apprehend the keeper or keepers of such place, and take them with the liquors and the vessels containing them, so found and seized, forthwith or as soon as may be convenient, before some justice of the peace, or court exercising the jurisdiction of a justice of the peace, of the town where found, and thereupon such officer shall make a written complaint under oath, and subscribed by him, to such justice or court, that ale, wine, rum, or other strong or malt liquors, or mixed liquors, a part of which is ale, wine, rum, or other strong or malt liquors, was found in the possession of such keeper or keepers, in a tent, shanty, hut, or place for selling refreshments, and upon proof that said liquors are either ale, wine, rum, or other strong or malt liquors, or mixed liquors as aforesaid, that they were found in the possession of the accused, in a tent, shanty or other place as aforesaid, for sale, he or they shall be sentenced to imprisonment in the county jail of the same county for twenty days, and the liquor and vessels so seized shall be dealt with, by order of such justice or court, as provided in the ninth section of this act. But from the sentence and order of said justice or court as aforesaid, the defend-

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ant may appeal to the Court of Common Pleas next to be holden in the same county after ten days; in the same manner, and upon the same terms and conditions and with the like effect, as prescribed in section 6th of this act. And in case of such appeal, if the final decision shall be against the appellant, sentence as aforesaid shall be passed upon him by the appellate court, and the liquor and vessels seized as aforesaid shall be dealt with as aforesaid.

SEC. 11. In all cases of appeal under this act, in which the appellant shall fail to enter and prosecute his appeal in the appellate court according to law, said court in addition to defaulting his recognizance, shall order all liquors and vessels in the custody of the officer, under the provisions of the 9th section of this act, to be dealt with as in that section provided: and whenever a default shall be had of any recognizance taken in pursuance of this act, suit shall be forthwith commenced in a court having competent jurisdiction.

SEC. 12. Whenever a justice of the peace or any court exercising the jurisdiction of a justice of the peace, shall convict any person of a violation of the provisions of this act, and the person convicted shall claim an appeal, it shall be the duty of such justice or court, upon motion of the complainant or the defendant, to require any witness sworn, to enter into recognizance in the sum of fifty dollars, conditioned that he will appear at the appellate court to testify in the trial whenever such appeal shall be called for trial.

SEC. 13. No person or persons, who shall make any complaint for the violation of any of the provisions of this act, except the provisions of the fourth section thereof, shall be required, at the time of making such complaint, to enter into recognizance, or in any way to become liable for the costs that may accrue thereon. Complainants appointed by the town where the offence is committed, and the complaint made, the city marshal, city sergeant, and city watchmen of the city of Providence, the sheriffs and deputy sheriffs of the several counties, and the town sergeants and constables of any town, and such persons as shall waive in writing, on the complaint, at the time of making the same, in favor of the State, the complainant's por-

tion of the penalty, shall not be required, upon making any complaint for the violation of any of the provisions of the fourth section of this act, to enter into recognizance or give surety. All other persons upon making any complaint for a violation of any of the provisions of the fourth section of this act, shall enter into recognizance with surety in manner and with like conditions, as is required by the 135th section of the act entitled "an act concerning crimes and punishments."

SEC. 14. In any action, complaint and warrant, indictment or other proceedings, against any person for a violation of any of the provisions of this act, it shall not be necessary to set forth the kind or quantity of ale, wine, rum, or other strong or malt liquors, or mixed liquors, as aforesaid, or the time of the sale or manufacture thereof; but proof of the violation of any of the provisions of this act, the substance of which is briefly set forth therein, within the times mentioned therein, by the person complained of, shall be sufficient to convict such person; nor shall it be requisite in any such action, complaint and warrant, indictment or other proceeding, to set forth a record of a former conviction, or any allegation of any such conviction, but any such conviction, may be proved, in the same manner, and with the same effect as if an allegation thereof had been made; nor shall it be necessary to particularly describe the packages or kinds of liquor to be searched for. And any defects in any such complaint and warrant, indictment, or other proceeding, either of form or substance, may be amended either by the justice, or court exercising the jurisdiction of a justice or other court before whom the action, complaint and warrant, indictment or other proceeding is originally brought. All cases of appeal under this act from the judgment or sentence of a justice of the peace, or court exercising the jurisdiction of a justice of the peace, shall in the appellate court, be conducted and argued by the Attorney General in behalf of the State; and in every case in such court in which the appellant shall be required to pay the costs, the sum of six dollars shall be taxed in the bill for the services of the Attorney General; for which sum, the clerk of said court or other officer to whom such

costs may be paid, shall account with the General Treasurer: and no costs in any such case shall be remitted or reduced.

SEC. 15. Any justice of the peace within the town in which he resides, and any court exercising the jurisdiction of a justice of the peace, within the town in which such court is established, shall have jurisdiction and cognizance of all offences done or committed in the town in which the justice trying the cause shall reside, in violation of any of the provisions of the fourth, ninth and tenth sections of this act, with power to proceed to trial, render judgment, pass sentence, and award a warrant for execution thereof: and complaints for the violation of any of the provisions of the act, may be made to either of the justices of any court exercising the jurisdiction of a justice of the peace, and the warrants issued thereon may be signed by either of the justices thereof. And whenever a court exercising the jurisdiction of a justice of the peace, is or shall be established in any town, such court shall have exclusively, in such town, the jurisdiction, cognizance and powers conferred by this act. And any violation of any of the provisions of the eighth section of this act, upon any of the waters of Narragansett Bay, or other public waters of this State, may be prosecuted, by indictment, in any county in this State; and any violation of any other of the provisions of this act, upon any of the waters of Narragansett Bay, or other public waters of this State, may be prosecuted by complaint and warrant, before any justice of the peace of any town, or any court exercising the jurisdiction of a justice of the peace, in any town in this State.

SEC. 16. In addition to the fees now allowed by law, the justice of the peace, or court exercising the jurisdiction of a justice of the peace, shall be entitled to receive for taking any bond under this act, the sum of fifty cents; and the officer who shall make service of any warrant or process for the seizure of any liquors under the ninth or tenth sections of this act, shall be allowed for the same the sum of one dollar: for the removing of any liquors so seized, to a place of safety, all expenses by him incurred in the removal, care and custody of said liquors, the sum of one dol-

lar: said fees to be included in the bill of costs and taxed by the justice or court against the defendant.

SEC. 17. All payments or compensations for liquors sold in violation of law, whether in money, labor, or personal property, shall be held and considered, as between the parties to such sale, to have been received in violation of law, without consideration, and against law, equity and good conscience: and in any action either at law or equity touching such money, labor, or personal estate, the purchaser and also the seller of such liquors may be a witness for either party. And no action of any kind shall be had or maintained in any court in this State, for the recovery or possession of intoxicating liquors, or the value thereof, except such as are sold, purchased or held, in accordance with the provisions of this act.

SEC. 18. Nothing herein contained shall be construed to affect any prosecutions commenced or proceedings pending on the 18th day of July, 1852, for the violation of any of the provisions of an act entitled "An Act enabling town Councils to grant Licences for retailing strong liquors and for other purposes," passed at the January session, A. D., 1844, or of any act or acts in amendment of or in addition to the same, or to affect any prosecutions commenced or proceedings pending, or which may hereafter be commenced before this act shall go into effect, for the violation of "An Act for the suppression of Drinking Houses and Tippling Shops," passed at the May session, A. D. 1852, or of any act or acts in amendment of or in addition to the same; or in any way to affect any right, title, interest, duty, obligation, penalty, forfeiture, claim or demand, which shall have vested, accrued, or become forfeited by virtue of the acts aforesaid, but said prosecutions may be commenced, proceeded with, tried, determined, and sentence thereon passed and executed, in the same manner and with the same effect, as if this act had not been passed. And any and all appointments of agents for sale, and of complainants, made by any town council, or board of Aldermen, or by any town, and all bonds, obligations or engagements, given, assumed, or taken under the provisions of the said act of May, 1852, shall be deemed as valid and effectual to all intents, as if made, giv-

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en, assumed, or taken, after this act shall have taken effect, and in virtue of this act.

SEC. 19. The legal voters in the several towns may, at the annual election in April next, vote upon the question of repealing this act. And the Secretary of State is hereby directed to furnish printed ballots to the town clerks of each town equal to six times the number of persons who voted in such town at the last election, upon one side of which ballots shall be printed the question—"shall the act for the more effectual suppression of drinking houses and tippling shops be repealed," and on the reverse, upon one half of said ballots the word "Yes," and upon one half the word "No." And any voter wishing to vote upon said question, shall enclose one of such ballots in the envelope containing his ballot for general officers, or in case he does not vote for general officers, then in one of the envelopes provided by law for that purpose. Said ballots shall be sealed up and deposited with the Secretary of State and be counted by the General Assembly at the next May session, and in the event of a majority of such ballots being cast in favor of the repeal of this act, the same shall be limited in its operations, and have no effect after the tenth day from and after the rising of the General Assembly at said May session. *Provided*, however, that in case the vote of the people shall be for repeal, such repeal shall not in any way affect any prosecutions commenced, or proceedings pending, under this act, on or before the day of its repeal.

SEC. 20. All acts and parts of acts in any way inconsistent with the provisions of this act are hereby repealed.

AN Act in relation to appeals in criminal causes within the jurisdiction of Justices of the Peace.

It is enacted by the General Assembly as follows ;

SECTION 1. When any person convicted before any justice of the peace or any court in this State, exercising the jurisdiction of a justice of the peace, of any offence within the jurisdiction of such court or justice to try and determine and sentenced to pay a

Act in relation to appeals in criminal causes.